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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,545	08/09/2001	Peter Schlemm	A-2812	6082

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EXAMINER	
GUTIERREZ, ANTHONY	
ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/927,545	**Applicant(s)** SCHLEMM, PETER	
	Examiner Anthony Gutierrez	**Art Unit** 2857	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: The Examiner maintains the same grounds of rejection as in his Final Rejection. The Examiner is not persuaded by the Applicant's arguments filed in the present reply. Specifically, the Applicant disagrees that the cited portions of the Morris reference, applied in the previous Office Action, include the limitation of checking whether an output mode is switched on, and outputting an output signal only if the output mode is switched on. The Examiner has previosuly documented in the Final Rejection the way that the cited portions of the reference anticipate the claim language of the present application within the broadest reasonable interpretation. The Applicant presently argues that the Morris reference does not disclose anything about switching on or off enhancement routines. The Examiner never has claimed that it taught such a feature, nor has the Examiner relied on such a teaching for interpretation of the reference to teach the limitations of the presently claimed invention. The Applicant presently argues that the occurrence of no data in the buffer storage would lead to no output signal, and therefore there is no choice provided to switch an output signal on or off, because in order to achieve this, the output signal must be at least produced and available. The Examiner has interpreted the Morris reference, in brief, such that the existence of data in the storage buffer is a condition that provides an output mode to be switched on, and only under such a circumstance would an output signal be output. The Applicant is choosing to interpret that a "choice" needs to be provided to a preexisting signal as to whether to switch the output signal on or off in his argument regarding this citation, but the Examiner is not suggesting that such a choice is a requirement for anticipation of the present claim language, as the present claim language does not include a specific "choice" with respect to switching on or off the output SIGNAL, but only CHECKING whether an output MODE is switched on and outputting the output SIGNAL only if the output MODE is switched on. The Examiner maintains that the cited portions of Morris as addressed in the Final Rejection, discloses these limitations. The Applicant further suggests that the Examiner's position is based on a misunderstanding with respect to the enhancement routines as they apply to message packets stored in a sound buffer. The Applicant notes that because the content of the buffer is always processed by the enhancement routines, the routines do not have to check if there is anything stored in the buffer. The Examiner disagrees with this conclusion. The Examiner has addressed in the previous Action and above his interpretation that the existence of a message or data packet in the buffer constitutes an output mode being switched on. Therefore regardless of whether the enhancement routine functions in constant, periodic, or discrete communication with the buffer, it is only providing the ouput of the output signal when the packet is in the buffer, not when there exists no packet in the buffer. It would therefore need to check in the broadest reasonable interpretation of the word "check" whether or not a packet exists in the buffer, and therefore, whether an output mode has been switched on. Lastly, the Applicant has included a comparison of the method of Morris to the method of the present invention for further distinction. The Applicant, however, is relying on his interpretation of the claim language and not on the interpretation relied on by the Examiner.